

# AMERICAN TRUCKING ASSOCIATIONS



2200 Mill Road • Alexandria, VA 223 14-4677

July 2, 1998

Docket Clerk  
US DOT Dockets, Room PL-401  
400 Seventh Street, SW  
Washington, DC 20590-000 1

Re: FHWA Docket No. FHWA-98- 3637-4

Dear Sir/Madam:

The American Trucking Associations (ATA) with headquarters offices at 2200 Mill Road, Alexandria, VA 223 14-4677, files these comments in response to The Federal Highway Administration's (FHWA) Notice of Petitions and Intent to Grant Applications for Waivers; Request for Comments (63 Fed. Reg., 30285, June 3, 1998). According to the Notice, FHWA intends to grant the applications of twelve individuals for a waiver of the vision requirements in the FMCSRs. Granting the waivers will enable these persons to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41 (b) (10). ATA opposes FHWA's intent to grant these waivers.

## Statement of Interest

ATA is a federation of trucking and transportation associations in every state. Through 50 affiliated state trucking associations, 14 affiliated national organizations, and more than 3,500 direct company members, ATA represents over 34,000 motor carriers and suppliers of every type, including but not limited to, for-hire carriers, truck leasing companies, and truck-equipment manufacturers and other suppliers of goods and services to carriers.

The ATA Safety Policy Department (Department) participates in rulemaking proceedings before federal and state agencies that regulate safety and health issues affecting the trucking industry. In representing the trucking industry, ATA has submitted comments to FHWA on all aspects of the Federal Motor Carrier Safety Regulations (FMCSRs) including proposals for waivers and other issues pertaining to the medical qualifications of drivers. With full-time safety specialists, the Department also offers ATA members a wide range of safety and health services, including educational materials, seminars, and individual consultations and on-site audits

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## **The ATA Position**

ATA continues to oppose the erosion of the medical standards currently set forth in 49 CFR 391 (41)(b). On the issue of vision waivers, ATA has been consistent in its opposition to the granting of such waivers as illustrated in its written comments to FHWA in response to docket nos. MC-96-2, and FHWA-97-2825.

Once again, ATA firmly opposes FHWA's intent to grant 12 additional vision waivers. Industry experience clearly demonstrates that the current vision requirements have served well in ensuring that the drivers of the nation's trucks are in sufficiently good health to be able to safely perform their duties. The efficacy of the current regulations is, in large part, responsible for the very small number of accidents in which the medical condition of the drivers was reported as a causative factor.

It is generally acknowledged that 90-95% of a driver's actions are determined primarily by what he/she sees. The driver must be able to monitor changing conditions of the road, weather and traffic. In addition, the continued adaptation of Intelligent Transportation System (ITS) technology provide for an ever-increasing array of gauges and other displays being added to the interior of the vehicle. This increases the demand for the driver's attention to visual detail and need for increased, not decreased, visual acuity.

FHWA plans to monitor the driving records of the 12 drivers who are seeking vision waivers, as it does for the over 2,000 drivers currently in the waiver program. However, the continued practice by FHWA of granting vision waivers could result in thousands of such waivers. This being the case, FHWA will find that it will not be able to monitor the driving records and other additional obligations of large populations of drivers who receive vision waivers. The result will be a slow but steady decline in highway and public safety.

ATA members view the need for peripheral vision as crucial in obtaining a commercial drivers license (CDL) to operate a commercial motor vehicle (CMV) in interstate commerce. According to one ATA member, "[T]he peripheral vision factor is of main concern." That concern lies in the fact that the direction of head movement takes away total vision perception. For example, when a driver with monocular vision is checking mirrors, the one eye must focus on that item alone. This creates a loss of total vision awareness of what is happening in two other directions – front and opposite side. We agree with that member's assertions.

Other ATA member concerns include possible problems, such as foreign objects in the "good" eye could cause temporary blindness.

FHWA maintains that the drivers who seek vision waivers have excellent driving records. However, it is unknown if these drivers drive long distances. The demands of driving long distances can produce eye strain and fatigue in drivers with 20/20 vision, let alone those drivers with monocular vision.

Other ATA members are concerned that FHWA will use the supposed excellent safety records of the drivers in the waiver program and past waiver studies as justification to allow less stringent vision requirements. The fact is that FHWA's vision waiver program will never be a good predictor of how drivers with impaired vision in one eye will operate in the future.

ATA acknowledges that individual states can and do grant vision waivers to operate CMVs in intrastate commerce. This creates additional problems for motor carriers that operate primarily in intrastate commerce. Those motor carriers will continue to experience a lack of control over the medical requirements of their drivers, and hence highway and public safety.

### The Americans With Disabilities Act

In Section 4.6 of its Technical Assistance Manual on Title I of the Americans with Disabilities Act (ADA), the Equal Employment Opportunity Commission (EEOC) clearly states that the ADA does not override health and safety requirements established under other federal laws. The EEOC provides the following example:

An employee who is being hired to drive a vehicle in interstate commerce must meet safety requirements established by the U.S. Department of Transportation.

Complying with FHWA safety requirements, including the vision standards, is an "essential function" of the job of any commercial vehicle driver. Clearly, the twelve drivers in question cannot meet these safety requirements. While the FHWA has conducted numerous studies to determine whether the vision standards for monocular-visioned drivers could be safely changed, it has yet not seen fit to change its regulatory scheme to reduce the standards.

The granting of vision waivers effectively removes the preemptive effect that FHWA regulations have over the ADA, and forces motor carriers to assume the risk of waiving vision requirements that the FHWA itself has not determined can be safely waived. Motor carriers, who have a legal responsibility to the public for maintaining highway safety, are therefore placed in the unenviable position of having to choose between allowing waived drivers to operate their vehicles or facing possible litigation for violation of the ADA if they refuse to hire such drivers. Forcing motor carriers to make such a choice could have a dramatic impact on both public and highway safety.

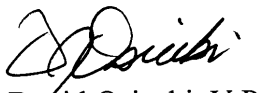
### **Conclusions and Recommendation**

- The trucking industry continues to oppose the granting of waivers to drivers who cannot meet existing medical standards.


- ATA supports FHWA's current requirement that drivers under the vision waiver program be subjected to annual medical examinations and annual vision checks by an optometrist or ophthalmologist.
- Drivers who are granted vision waivers should be required to report involvement in any DOT-recordable accident directly to FHWA and should be required to undergo a medical examination and required evaluation of his or her vision before being authorized to drive a CMV.
- FHWA should clarify its predominance over the Americans with Disabilities Act, as it applies to safety-sensitive jobs and tasks.

ATA appreciates the opportunity to comment on this notice and proposed granting of 12 vision waivers. If there are further questions about the trucking industries position on this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,



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Safety Policy  
Safety Department



Stuart Flatow, Director  
Occupational Safety and Health  
Safety Department